Retail Energy Supply Association

Testimony for Senate Bill 1

Submitted to the Energy and Technology Committee

March 15, 2011

Good Morning Members of the Energy and Technology Committee,

On behalf of the Retail Energy Supply Association I would like to offer this testimony in opposition to several sections of Senate Bill 1 and recommend several amendments to sections within the bill. RESA is a trade association of competitive retail energy supply companies committed to the development and growth of a robust, vibrant and sustainable retail energy market in Connecticut, employing over 3,000 people in the state. Connecticut consumers have demonstrated their support of the competitive market through the large amount of consumers switching to competitive suppliers. As of January 31, 602,349 customers representing 61% of the total statewide electric load, 87% of the entire large commercial and industrial electric load and 77% of the small and medium-sized commercial electric load is served by a competitive electric supplier.

As currently proposed, Senate Bill 1 would essentially require utilities to gamble with ratepayer money. The bill requires utilities to procure more of their power with less regulation from the DPUC. If passed, this legislation would allow the utilities to enter into risky long term contracts and make other procurement decisions in an effort to produce lower electricity rates for consumers. These "active portfolio management" activities would require the utilities to predict market trends in a futile attempt to produce pricing outcomes that are consistently better than what the competitive market can produce. As this Committee is aware, utilities long ago stopped engaging in these business practices when the state chose to restructure the energy market because the prior regulated model produced high electricity rates and inefficient generation construction decisions. This legislation produces a 180 degree departure from this policy decision and will shift the risk of energy procurement decisions back to customers instead of on energy company stockholders.

Section 52 would require the Department of Energy and Environmental Protection to conduct a proceeding to determine the cost of billing, collection and other services provided by the utilities and allocate these costs to retail suppliers that choose to use utility consolidated billing. At the outset it is important to emphasize that many RESA members currently directly bill many of their commercial customers. However, many RESA members do bill many of their smaller customers through the utility rather than directly. First of all, many customers want the convenience and simplicity of receiving a single bill rather than two separate bills for electricity service. Secondly, it is only fair to allow retail suppliers to bill their charges through the billing and customer care functions provided by the utility. All customers pay for these functions through their regulated distribution rates. To charge a retail supplier for use of these services will necessarily result in customers served by retail suppliers paying for these services twice—once to the utility and again to the retail supplier. Clearly this is an untenable outcome.

Section 52 will require retail suppliers using utility billing to pay for the cost of these billing and collection services. While RESA is not opposed to the examination of how costs for utility billing functions are allocated, we think it is important to: 1) maintain the ability of retail suppliers to bill their services through the utilities for the convenience of customers, and 2) ensure that any allocation of additional costs of utility billing services to retail suppliers does not force customers to pay those costs twice.

Section 54 develops additional consumer protections, RESA supports the state's adoption of essential consumer protections, but we believe the current proposals reflected in this section are not sufficiently tailored to accomplish the state's goals and will actually result in unintended consequences leading to inferior service and higher costs for customers. RESA feels strongly that the provisions in Section 54, including paragraph e, and lines 4270-4312, paragraph f, lines 4328- 4361; should apply to residential customers only, as opposed to using a customer size measurement like 100 kW, which would include many restaurants and other sophisticated businesses that would only hinder their ability to get the best prices available. RESA would propose changing this section to apply to residential customers, or customers with a usage of 50 kW or less.

Section 54 imposes severe restrictions on the marketing and sale of electricity to commercial customers by applying to them door-to-door sales requirements more appropriately designed for residential customers. For example the language in section 54 limits door-to-door visits from the hours of ten o'clock am and six o'clock pm, without any making any expectations for previous scheduled appointments. Clearly a retail supplier should be free to sit down with business owner to discuss his or her electricity needs at 7:00 pm if such an appointment were requested by the owner. Accordingly, RESA would recommend adding after six o'clock pm, in line 4351, 'or (C) during a scheduled appointment at the premises of a non-residential customer'.

Section 54 also imposes a 3-day contract rescission period that would begin to toll once the customer receives the written contract. RESA does not oppose the 3-day right of rescission, but believes this requirement should only apply to residential contracts. Imposing a rescission period for the C&I market will dramatically impact suppliers existing procurement strategies. For the C&I market most suppliers buy energy for customers as soon as the contract is executed. The extended rescission period will impose added costs on suppliers resulting in higher prices for customers, because of the amount of risk placed on the competitive suppliers with the increase rescission time for even the most sophisticated customers. It should be noted, the proposed language provides an incentive for a retailer to utilize door-to-door marketing, but provides a disincentive to telemarketing channels due to the added time it takes to mail a written contract to the customer under telemarketing practices. The mailing of a written contract, after receiving the customer's affirmative consent to effectuate a change in service via third-party verification, extends the rescission period and increases mark-to-market risks and costs to the retailer (which are ultimately borne by customers). RESA would support this provision after amending it to effect residential contracts only.

Section 54 also makes several references to legal agents of suppliers, but does not define an agent. RESA would recommend adding the following definition of agent to the bill. It is important to emphasize the difference between an agent, who acts exclusively on behalf of a particular supplier, and a broker, who may have a contractual relationship with and receive compensation from suppliers, but who does not act as an agent for any particular supplier.

> "Agent" is intended to apply to any person who is authorized, directly or indirectly, either to conduct marketing or sales activities or to enroll customers, in each case exclusively on behalf of a Supplier or Aggregator. The term "agent" may includes an employee, a representative, an independent contractor, or a

vendor; but does not include Brokers or any employee of an organization that is providing access to a Supplier or Aggregator as a service to the organization's members.

To ensure the State's valid concern that important consumer protections be applied in the areas that they are essentially needed, RESA would support amending the consumer protections enumerated in these sections so they only apply to the marketing and sale of electricity to residential customers and we would encourage that these amended provisions be applied to the utilities marketing practices as well.

Section 54 (6) also discusses limitations on penalties for customers looking to amend or cancel their contract with a supplier. First, it is important to note that early termination fees are one of many factors that customers can take into account when shopping for a suppliers. Some suppliers impose early termination fees for residential customers cancelling a contract and others do not. Customers are capable of factoring these issues into their purchase decision. Secondly, retail electric suppliers should be treated no different than any other type of vendor when a customer breaches its contract, especially, when that customer is a business. Early termination fees are a mechanism that suppliers can use to limit their financial risk of contract cancellation. Without the ability to hold customers to their contracts some suppliers may elect to charge higher prices in Connecticut to cover their increased risk. Accordingly, this provision may raises prices for the very customers the bill is intending to protect. It is in this way harmful to competition and should be removed.

RESA is concerned with Section 54(f)(2)(A)(iv) requiring Suppliers to disclose all terms and conditions states that a any salesperson must "explain **all** rates, fees, variable charges and terms and conditions for the services provided". RESA is concerned that this language would require a salesperson to read to the consumer all terms of the contract, which is likely to create te transaction to be more time consuming and result in consumer confusion. RESA would recommend amending this section to include the word "material" be inserted prior to "terms and conditions", with this addition we believe this committee would achieve its goals of consumer education and ensure consumers are aware of the contracts they will be signing without getting into the inconsequential details of the contract.

RESA does support the imposition of penalties with the violators of Section 4 but we are concerned the language in Section 54(i) is simply to strict and does not allow for "penalty to match the crime". RESA is concerned that there is not sufficient flexibility in the current provision for the department to factor in accidental violations of this provision, including if a salesperson where to enter into someone's home at 6:01pm. RESA believes the law should allow for more flexibility and recommends the word "may" replace the term "shall" so the new language would read:

> (i) Any violation or failure to comply with any provision of this section may be subject to (1) civil penalties by the department in accordance with section 16-41, (2) the suspension or revocation of an electric supplier or aggregator's license, or (3) a prohibition on accepting new customers following a hearing that is conducted as a contested case in accordance with chapter 54.

Section 66 discusses a managed portfolio procurement option that is harmful to the competitive market. The inevitable result of managed portfolios is the shifting of utility procurement decisions away from energy company investors onto consumers and potentially stranded costs if the utilities make bad purchasing decisions. A competitive supplier allocates many resources and experts to their procurement decisions, because we have to offer the lowest price possible to retain our customers. If the utility makes an error, likely since they do not have the resources of most suppliers do, that cost will go directly to the rate payer.

National Grid, a large multi-state utility, commissioned an analysis of actual price data to determine whether full requirements represent a better value for their customers than managed portfolio when both price and risk are looked at. Based on this analysis, the utility concluded that the reduction in supply cost certainty under full requirements was a much better value for its customers when compared to managed portfolio. The utility is now supporting the use of full requirements for its customers in New Hampshire, Massachusetts, Rhode Island and New York. RESA would encourage the committee to remove sections 66, 67, and 71, provisions that would provide utilities with procurement options that would result in increased and unnecessary risk for rate payers.

Competition is a vital tool for Connecticut families and business to save money in this troubled economy. This bill discourages businesses to stay in Connecticut and creates disincentive to develop cheaper, more efficient, and reliable energy. In these economic times business growth in

Connecticut is vital to its citizens. For Connecticut to become a center for the energy industry it must provide competitive marketplace. It is not only cost effective and better for the consumer it also fosters creative improvements in customer service and innovative technology. RESA strongly opposes sections of Senate Bill 1and believes amendments to the bill described above are necessary to maintain a thriving, competitive marketplace.

RESA's members include: Champion Energy Services, LLC; ConEdison Solutions; Constellation NewEnergy, Inc.; Direct Energy Services, LLC; Energy Plus Holdings, LLC; Exelon Energy Company; GDF SUEZ Energy Resources NA, Inc.; Green Mountain Energy Company; Hess Corporation; Integrys Energy Services, Inc.; Just Energy; Liberty Power; MXenergy; NextEra Energy Services; Noble Americas Energy Solutions LLC; PPL EnergyPlus; Reliant Energy Northeast LLC and TriEagle Energy, L.P.